

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 25, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LISA MARCH and CHARLES
MARCH, husband and wife,

Plaintiff,

v.

TOTAL RENAL CARE INC., a
foreign for profit corporation d/b/a
DAVITA; RENAL TREATMENT
CENTERS-WEST, INC., a foreign for
profit corporation; and DOES 1-5,

Defendants.

CASE NO: 4:24-CV-5079-TOR

ORDER GRANTING PLAINTIFFS'
MOTION TO AMEND AND
REMAND

BEFORE THE COURT is Plaintiff's Motion to Amend, Remand, or
Dismiss (ECF No. 16). Defendants have requested oral argument on this motion.
ECF No. 22 at 1. The Court has reviewed the briefing and the record and files
herein and is fully informed on the issues without the need for oral argument.
Therefore, this motion is submitted for consideration without oral argument.

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ORDER GRANTING PLAINTIFFS'
MOTION TO AMEND AND REMAND ~ 1

BACKGROUND

Plaintiffs Lisa March and Charles March (“Plaintiffs”) filed their initial Complaint May 26, 2024, in Franklin County Superior Court. ECF No. 1-1. The complaint alleges Plaintiff Lisa March (“March”) was employed by Total Renal Care Inc. and Rental Treat Centers – West, Inc. (collectively “Defendants”) as the mid-Columbia Kidney Center Manager in Franklin County, Washington. ECF No. 1-1 at 3, ¶ 9. In September of 2022, March reported her supervisor, Alan Grimm (“Grimm”), to human resources (“HR”) for inappropriately touching her while at work. *Id.*, ¶ 15. Shortly after, March received a “write-up” from Grimm over “a trivial comment made by” March. *Id.*, ¶ 21. March reported this to HR but never received a response. *Id.*, ¶ 23. After March sent a follow up email to HR regarding the harassment report against Grimm, HR arranged a three-way call between HR, March, and Grimm. *Id.* at 3, ¶ 24, at 4 ¶ 8. The complaint alleges that after the call, March started receiving random, unsubstantiated complaints of misconduct and work performance issues from Grimm despite Grimm having only visited March’s facility two or three times. *Id.* at 4, ¶ 19.

In March 2023, March followed up with HR about concerns of mistreatment and retaliatory behavior she was receiving from Grimm since coming forward with the sexual harassment claim against him. *Id.* at 5, ¶ 13. On April 24, 2023, HR responded that no further investigation of March’s complaints would take place.

1 *Id.*, ¶ 23. The complaint alleges that from March 2023 to March’s termination on
2 August 16, 2023, March was specifically targeted and scrutinized by Grimm. *Id.* at
3 6, ¶ 1.

4 The complaint also alleges March and other female employees of
5 Defendants were repeatedly bullied by another co-worker, Jesse Fazio (“Fazio”),
6 and March received no response from HR after filing a formal complaint against
7 Fazio in June 2023. *Id.* at 7, ¶¶ 1, 5. March alleges she was ultimately terminated
8 August 2023 in retaliation for coming forward about Fazio’s abusive behavior and
9 Grimm’s sexual harassment. *Id.*, ¶14. March further alleges Defendants
10 consistently refused to support March and “systematically and consistently
11 disregarded Mrs. March’s concerns regarding the facilities and risks posed to
12 employees and patients.” *Id.* at 8, ¶¶ 1, 7.

13 Plaintiffs filed this action in Franklin County Superior Court (including
14 DOES 1-5), asserting state law claims for discrimination and retaliation, wrongful
15 termination, and loss of consortium. Defendants timely filed a Notice of Removal
16 on July 8, 2024, to this Court based on diversity jurisdiction pursuant to 28 U.S.C.
17 § 1332(c). ECF No. 1. On August 16, 2024, Plaintiffs simultaneously filed three
18 motions. The first for leave to file an amended complaint adding claims against
19 Defendants and additional non-diverse defendants, the second to remand the case
20 back to state court, and the third for voluntary dismissal if remand is denied. ECF

1 No. 16. As discussed below, the Court grants Plaintiffs’ motion for leave to amend
2 the complaint to add additional parties. Accordingly, the case will be remanded to
3 Franklin County Superior Court for all further proceedings.

4 **DISCUSSION**

5 Plaintiffs seek to amend their complaint pursuant to the Federal Rules of
6 Civil Procedure (“FRCP”) Rule 15 to both add two additional claims and
7 previously unidentified non-diverse defendants. The Court has not set a
8 scheduling order in this case, yet. Plaintiffs cite to FRCP Rule 15 and 20 as a basis
9 for adding defendants in the amended complaint, however, where a plaintiff seeks
10 to join additional defendants in a previously removed case that would subsequently
11 destroy the Court’s jurisdiction, 28 U.S.C. § 1447(e) supplies the proper standard.
12 Under 28 U.S.C. § 1447, “[i]f after removal the plaintiff seeks to join additional
13 defendants whose joinder would destroy subject matter jurisdiction, the court may
14 deny joinder, or permit joinder and remand the action to the State court.”
15 28 U.S.C. § 1447(e). Therefore, the Court will treat Plaintiffs’ motion to amend to
16 add additional defendants as a motion for joinder under 28 U.S.C. § 1447(e).

17 “The decision regarding joinder of a diversity[-]destroying-defendant is left
18 to the discretion of the district court . . .” *Newcombe v. Adolf Coors Co.*, 157 F.3d
19 686, 691 (9th Cir.1998). In a joinder analysis, district courts in the Ninth Circuit
20 generally consider the following six factors:

(1) Whether the party sought to be joined is needed for just adjudication and would be joined under [FRCP] 19(a); (2) whether the statute of limitations would preclude an original action against the new defendants in state court; (3) whether there has been unexplained delay in requesting joinder; (4) whether joinder is intended solely to defeat federal jurisdiction; (5) whether the claims against the new defendant appear valid; and whether denial of joinder will prejudice the plaintiff.

Falcon v. Scottsdale Ins. Co., 2006 WL 2434227, at *2 (E.D. Wash. Aug. 21, 2006).

1. Just adjudication and Federal Rules of Procedure rule 19

Under the first factor, “[FRCP] Rule 19(a) requires joinder of persons whose absence would preclude the grant of complete relief, or whose absence would impede their ability to protect their interests or would subject any of the parties to the danger of inconsistent obligations.” *Falcon*, 2006 WL 2434227, at *2.

Defendants argue this factor weighs against joining Grimm and Fazio as defendants because they are not necessary parties under FRCP 19. ECFR No. 22 at 9. Defendants argue because Plaintiffs are proceeding under a theory of vicarious liability, any of Plaintiffs’ damages could be fully satisfied by existing defendants. *Id.* However, Defendants’ argument necessarily presumes Plaintiffs would even be successful on a vicarious liability claim. *See, e.g., Walth v. Staples the Office Superstore, LLC*, 2018 WL 616139 (E.D. Wash. Jan. 29, 2018) (“Although Defendants have stated that Spar would have vicarious liability for Mr.

1 Udby's conduct, the Court finds that at this point in the litigation, Spar's assertions
2 of liability may be undermined by later motion practice."). If Defendants were to
3 succeed in avoiding liability under a vicarious liability theory, Plaintiffs would
4 need to refile any claims in state court against the proposed defendants.

5 Additionally, Plaintiffs seeks to bring an additional state claim directly
6 against Grimm and Fazio. ECF No. 16-2 at 16. As discussed below, if Plaintiffs
7 state a plausible claim for relief against the proposed defendants regarding the
8 additional claim, the denial of joinder would prevent Plaintiffs complete relief.
9 Therefore, this factor weighs in favor of joining the proposed defendants.

10 2. Statute of limitations

11 Both parties agree there is no statute of limitations issue. ECF Nos. 24 at 6;
12 22 at 10.

13 3. Timeliness

14 "When determining whether to allow a plaintiff to amend [a] complaint to
15 add a non-diverse party, courts consider whether the amendment was attempted in
16 a timely fashion." *Falcon*, 2006 WL 2434227, at *3. Plaintiffs filed this motion to
17 amend the pleadings August 16, 2024 (ECF No. 16), forty days after this action
18 was removed on July 8, 2024. Before removal, Plaintiffs' counsel had filed a
19 notice of unavailability with the state court May 21, 2024, indicating her absence
20 from July 1 to July 25, 2024. ECF No. 1-3 at 29. The day after removal,

1 Plaintiffs' counsel filed a notice of unavailability with this court reiterating her
2 absence from July 9 to July 25, 2024, and additionally July 31 to August 9, 2024.
3 ECF No. 7. On July 29, Plaintiffs' counsel hired co-counsel, F. Dayle Andersen,
4 to assist with the litigation. ECF No. 16-4 at 7. It was after co-counsel reviewed
5 the case file August 12, 2024, that additional claims were identified addressing the
6 proposed new defendants. *Id.* Given these facts, the Court finds Plaintiffs filed the
7 amended pleadings in a timely fashion without unreasonable delay, therefore, this
8 factor weighs in favor of joinder.

9 4. Motive for joinder

10 “[A] trial court should look with particular care at such motive in removal
11 cases[] when the presence of a new defendant will defeat the court’s diversity
12 jurisdiction and will require a remand to the state court.” *Desert Empire Bank v.*
13 *Insurance Co. of North America*, 623 F.2d 1371, 1376 (9th Cir. 1980).

14 Defendants argue Plaintiffs’ sole motivation in wanting to join additional
15 defendants is to destroy the Court’s subject matter jurisdiction over the case. ECF
16 No. 22 at 12-13. According to Defendants, this intent is evidenced by both a
17 statement made by Plaintiffs in the docket filings (ECF Nos. 22 at 13 (“As the
18 addition of individual defendants will eliminate full diversity, plaintiffs assert that
19 this warrants remand back to the Franklin County Superior Court.”)) and Plaintiffs’
20 request to dismiss the case if joinder and remand is denied. ECF No. 16-4 at 8, ¶ 1.

1 The Court disagrees. Defendants cited “evidence” does not persuade the Court that
2 Plaintiffs’ motive for joinder was an improper one, particularly in light of
3 Plaintiffs’ allegations in the amended complaint that appear to have merit as
4 discussed below.

5 5. Validity of claims

6 Next, the Court must look to the apparent merit of the claims against the new
7 defendants. “The existence of a facially legitimate claim against the putative
8 defendant weighs in favor of permitting joinder under section 1447(e).” *Wilner v.*
9 *Okta*, 2022 WL 5133743, at *4 (W.D. Wash. Oct. 5, 2022) (quoting *Taylor v.*
10 *Honeywell Corp.*, 2010 WL 1881459, at *3 (N.D. Cal. May 10, 2010)). Plaintiffs
11 seek to add both proposed defendants, Grimm and Fazio, to the existing claims of
12 discrimination and retaliation, wrongful termination, and loss of consortium, as
13 well as to the proposed tortious interference claim. ECF No. 16-2 at 13-17.

14 Grimm was Plaintiff, Lisa March’s supervisor while she was employed with
15 Defendants. ECF No. 1-1 at 3, ¶ 13. Plaintiffs’ existing claims against Defendants
16 stem both directly and indirectly from Grimm’s alleged behavior as March’s
17 supervisor. *Id.* at 3-10. The fact that Plaintiffs are pursuing a vicarious liability
18 claim against Defendants does not make Grimm immune to personal liability. As
19 such, the existing claims appear to have some merit with regard to Grimm.

1 In contrast, Fazio was March's co-worker with no mentioned supervisory
2 role over March. ECF No. 16-2 at 5, ¶ 21. Plaintiffs' claims of discrimination and
3 retaliation under the Washington Law Against Discrimination ("WLAD") applies
4 to employer/employee or similar relationships. *See, e.g., Pardee v. Evergreen*
5 *Shores Beach Club*, 13 Wash.App.2d 1111 (2020) ("The Pardees cannot satisfy the
6 elements of a retaliation claim. The relationship between Shannon and the ESBC
7 is neither an employee-employer relationship nor its functional equivalent.").
8 Likewise, Plaintiffs' wrongful termination claim and any loss of consortium as a
9 result of termination and the retaliation claim require an employer-employee like
10 relationship between March and Fazio, which by Plaintiffs' own admission was not
11 the case here. ECF No. 16-2 at 5, ¶ 21. Thus, Plaintiffs' claims against Fazio as to
12 the first three causes of action appear to lack merit.

13 Of the two proposed additional claims, the handbook claim does not appear
14 to implicate Grimm and Fazio, only Defendants. ECF No. 16-2 at 17, ¶ 7. As for
15 the tortious interference claim, Defendants argue that because Plaintiffs allege
16 Grim and Fazio were acting within the scope of their employment under Plaintiffs'
17 vicarious liability theory, a simultaneous claim that Grim and Fazio were acting
18 outside of their scope of employment for the tortious interference claim is invalid.
19 ECF No. 22 at 14. However, FRCP 8(d)(3) permits this very action: "A party may
20 state as many separate claims or defenses as it has, regardless of consistency."

1 Fed. R. Civ. P. 8(d)(3). If Grim and Fazio are found to have been acting outside
2 the scope of their employment, the Court finds Plaintiffs factual assertions, if
3 proven true, support a basis for liability under the tortious interference claim.
4 Therefore, Plaintiffs have stated viable claims against both proposed defendants,
5 which favors permitting joinder.

6 6. Prejudice to Plaintiffs

7 Preventing Plaintiffs from joining non-diverse defendants, Fazio and
8 Grimm, in this action would require Plaintiffs to choose between pursuing parallel
9 action arising from the same facts and circumstances as this action or foregoing
10 any claims against Fazio and Grimm. Any parallel litigation would also be a waste
11 of judicial resources and risk inconsistent results. As such, the Court finds
12 Plaintiffs will suffer prejudice if joinder is denied.

13 **CONCLUSION**

14 Considering all the factors discussed, the Court finds joinder of non-diverse
15 defendants Fazio and Grimm is warranted in this case, thereby divesting the Court
16 of jurisdiction over this action. The Court reserves Plaintiffs' motion to amend to
17 bring additional claims against Defendants to the state court. The Court need not
18 address Plaintiffs' motion to dismiss.

19 **IT IS HEREBY ORDERED:**

20 1. Plaintiffs' Motion to Amend (ECF No. 16) is **GRANTED in part**.

1 2. Plaintiffs' Motion to Remand (ECF No. 16) is **GRANTED**.


2 3. Plaintiffs' Motion to Dismiss (ECF No. 16) is **DENIED as moot**.

3 4. This case is hereby **REMANDED** to the Franklin County Superior Court
4 for all further proceedings.

5 The District Court Executive is hereby directed to enter this Order, furnish
6 copies to counsel, mail a certified copy to the Clerk of the Franklin County
7 Superior Court, and **CLOSE** the file.

8 **DATED** September 25, 2024.




THOMAS O. RICE
United States District Judge